

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
GEORGE SIMONE BRANCH,
Defendant/Movant.

Case No. 12-cr-00535-PJH-1

ORDER TO SHOW CAUSE

Re: Dkt. No. 143

Before the court is the amended motion, filed by counsel for defendant George Simone Branch, for an order under 28 U.S.C. § 2255 to vacate, set aside or correct his sentence on the ground that his sentence has been rendered invalid by the Supreme Court's holding in *United States v. Davis*, 139 S. Ct. 2319 (2019), that the residual clause of 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague. Specifically, Branch claims that his conviction and sentence on Count 3, for carrying a firearm during and in relation to, and possessing a firearm in furtherance of, a crime of violence and a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A)(I), is illegal because it is based on a predicate offense of conspiracy to commit Hobbs Act robbery in violation of 18 U.S.C. § 1951(a), which no longer qualifies as a crime of violence as defined by the residual clause of § 924(c)(3)(B) invalidated by *Davis*. Branch further contends that conspiracy to commit Hobbs Act robbery does not qualify as a crime of violence as defined under the elements clause of § 924(c)(3)(A). See *United States v. Dominguez*, 954 F.3d 1251, 1262 (9th Cir. 2020) (declining to reach whether conspiracy to commit Hobbs Act robbery is a crime of violence under 18 U.S.C. § 924(c)(1)(A)); *United States v. Mendez*, 992 F.2d

1 1488, 1491 (9th Cir. 1993) (holding that conspiracy to commit Hobbs Act robbery
2 qualified as a crime of violence under the now-invalidated residual clause of
3 § 924(c)(3)(B) and declining to address the elements clause of § 924(c)(3)(A)). This
4 *Davis* claim appears colorable under 28 U.S.C. § 2255 and merits an answer from the
5 government.

6 The following briefing deadlines will apply, unless the parties submit a stipulation
7 and order for a different briefing schedule: (1) within 35 days of the date of this order, the
8 government shall file an opposition conforming in all respects to Rule 5 of the Rules
9 Governing Section 2255 Proceedings, showing cause why the court should not “vacate,
10 set aside or correct the sentence” being served by Branch; (2) counsel for Branch shall
11 file a reply brief 28 days after the opposition is filed. Thereafter, the matter will be
12 deemed submitted on the papers, unless the court orders otherwise.

13 **IT IS SO ORDERED.**

14 Dated: August 6, 2020

15 /s/ Phyllis J. Hamilton

16 PHYLLIS J. HAMILTON
17 United States District Judge
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